IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 7444 of 2007(J)

OS.177/2002 of MUNSIFF COURT, TIRUR
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PETITIONER: PETITIONER

O.UNNI, UPASANA,
P.O.KADAMPUZHA, MALAPPURAM DISTRICT.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA

RESPONDENTS:
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1. **ACHUTHAKUMAR, S/O PUVIL PULAPATTA VARIYATHU SAROJINI VARASYAR, 'GEETHALAYAM', KINAVALLOOR AMSOM AND DESOM, PALAKKAD TALUK AND DISTRICT.**

2. **GEETHA, D/O PUVIL PULPATTA VARIYATHU SAROJINI VARASYAR, -DO- -DO-.**

3. **RAJESH, S/O PUVIL PULPATTA VARIYATHU SAROJINI VARASYAR, -DO- -DO-.**

4. **SHAYAMALA, W/O LATE KOCHUNNI, PALLIKULANGARA HOUSE, MELMURI AMSOM AND DESOM, TIRUR TALUK, MALAPPURAM DISTRICT.**

5. **SANIL, S/O LATE KOCHUNNI, -DO-**

6. **SHYAM LAL, S/O LATE KOCHUNNI -DO-**

7. **SHYAMA, D/O.LATE KOCHUNNI, -DO-**

BY ADV. SRI.T.KRISHNAN UNNI
SRIC.M.MOHAMMED IQUABAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.7444/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE IA. NO.2354/05 IN OS. NO.177/02.

EXT.P2:- COPY OF THE JUDGMENT IN WP(C) NO.15388/06 DT. 20.12.06.

EXT.P3:- COPY OF THE IA.NO.236/07 DT. 2.2.07.

EXT.P4:- COPY OF THE JUDGMENT DT. 22.2.07.

EXT.P5:- COPY OF THE WITNESS LIST DT. 9.2.07.

EXT.P6:- COPY OF THE REPORT DT. 30.9.02.

/TRUE COPY/

P.S. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.7444 OF 2007

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Dated this the 1st day of August 2007

JUDGMENT

This writ petition is filed to set aside Ext.P4 order passed by the Munsiff's Court, Tirur. There was an application for setting aside the Commissioner's plan and report. The court had disposed of the matter on the ground that there is no dispute regarding the identification of the property by the defendants and further that the Commissioner has not been examined. The court did not go into the other materials to find out whether the plan and report are liable to be set aside or not. It is true that by an earlier order, this court found that there was no necessity to remit the Commissioner's plan and report. Needless to say that if a party wants to challenge the correctness of the Commissioner's plan and report, he can file an application for setting aside the same and adduce evidence. Here, I find that the party had sought to summon the Commissioner to be examined to prove the case. But the court below has dismissed the application even without examining him. Learned counsel for the petitioner had taken me through the affidavit filed by the plaintiff in the petition. In paragraph 4, specific reference is

made to the written statement filed by the defendants whereby they had disputed regarding the identification of the property. So one cannot say that there is no dispute at all regarding the identification of the property. Similarly, the last paragraph of Ext.P6 Commissioner's report also would indicate that measurement of the entire plaint schedule property may be necessary to find out the way. So at this stage, though I do not want to interfere with the order passed by the learned Munsiff, I make it clear that the plaintiff is at liberty to tender evidence to show that Commissioner's report and plan are not in accordance with the directions and that a fresh plan may be necessary and just because this application is dismissed, they should not be prevented from adducing evidence on that regard. If the court at any stage of the trial feels that the present plan and report are not sufficient for the proper disposal of the case the court is also at liberty to direct the Commissioner to submit a fresh plan, as the case may be.

With these observations, the writ petition is disposed of.

M.N.KRISHNAN, JUDGE

Cdp/-